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Approved For Release 2001/08/27 : CIA-RDP57-00384R001100060029-5

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. Lawrence R. Houston

FROM : Office of General Counsel

SUBJECT: Patents

DATE: 15 March 1951

OGC HAS REVIEWED.

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1. In response to the CIA Notice issued under Executive Order 10096 regarding invention by Government employees, I have had two people ask advice. The first, [REDACTED] employed in Reproduction, received a within-grade promotion for the new use of a zerographic process in combination with a microfilm reader. If any invention exists, there is no question of the Government's right to title since it was conceived in the course of his duties and directly related to his work. Whether patent protection is required can be determined by qualified Government patent attorneys.

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2. The second case is that of [REDACTED] who is currently employed [REDACTED]. He has about 100 inventions, many of which I gather are still in an experimental stage. His case will require action by the Agency to comply with Executive Order 10096, and the mechanical structure must be established to provide a finding on his rights in his work. He believes at least two inventions will be of direct benefit to the national interest. (Discounting natural faith in his own genius, if he is even partially correct in his assertions, this is worth immediate attention.)

3. The Executive Order sets up certain guiding presumptions and criteria. In brief, in determining a Government employee's ownership in his invention, the Government shall obtain title when the invention is made (a) during working hours, (b) with use of Government facilities, time, or personnel, (c) in pursuit of official duties (or in relation to them). If the contribution of the Government is less than this or if the Government lacks sufficient interest to assert its right, title shall remain in the employee, subject to reservation of a "shop right" in the Government.

4. In reaching a determination in accordance with the above, a presumption of the Government's entitlement to title is established when the employees are assigned:

- a. to invent or improve any art, etc.,
- b. to conduct research or development work,
- c. to supervise, coordinate, or review research or development work, or to perform liaison duties in relation to such work.

Inventions made by any employee falling in categories other than these

SECRET

SECRET

are presumed to be the employee's own property subject only to the reservation of a Government shop right. Either presumption is rebuttable and, in any event, shall not preclude a decision that the Government will take neither title nor shop right and the entire interest shall be left in the employee. All actions taken and rights acquired must be reported to the Chairman of the Government Patents Board in accordance with certain established procedures.

5. The Government Patents Board has given tentative guidance in a proposed Administrative Order (third draft 2 November 1950) providing that each agency is authorized to determine whether invention exists and to decide the respective rights of the Government and the inventor, subject to review by the Chairman. Provision is also made for appeal by the employee if he feels aggrieved. Once (the agency determines that the Government is entitled to some right in the invention, steps should be taken for patent protection.

6. In the absence of a qualified patent attorney, I believe it would be advisable from the Agency standpoint to determine whether or not "invention" is of interest to the Agency, regardless of any future patent protection. If it appears that the work may be of value to the Agency or to the Government in general, then perhaps the existence of patentable invention could be referred to the patent attorneys of the Department of Defense. (Major James Mills of Col. Gardes' office, and Mr. Snyder of the Office of Naval Research have qualified staffs and will be willing to provide assistance.) If the Agency is interested and a patent has not yet been issued, the application should be placed under "Secrecy" order in the patent office if there is a security factory present. In determining the Agency's interest, I believe the matter should be referred to a committee or panel of representatives from the appropriate branches (Procurement and Communications immediately come to mind and perhaps the Covert Management Sections). I should like to discuss this further at your convenience and, in view of [REDACTED] situation, I believe we should take action as soon as possible.

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